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14
IN THE UNITED STATES DISTRICT COURT
 15
FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 SAMUEL DIGIACOMO,

18 Plaintiff,

19 v.

20 EX'PRESSION CENTER FOR NEW MEDIA,
 INC., d/b/a EX'PRESSION COLLEGE FOR
 21 DIGITAL ARTS, et al.,

22 Defendants.

23 Case No.: C08-01768-MHP

24 **(1) STIPULATION AND JOINT
 REQUEST FOR STAY PENDING
 RESOLUTION OF DEFENDANT
 EX'PRESSION CENTER FOR NEW
 MEDIA'S MOTION TO COMPEL
 ARBITRATION**

25 **(2) [PROPOSED] ORDER**

26
 Judge: Hon. Marilyn H. Patel
 Date: August 18, 2008
 Time: 4:00 P.M.

27 Complaint Filed: April 2, 2008

1 **WHEREAS** Plaintiff Samuel DiGiacomo (“Plaintiff”) is a former student of Defendant
2 Ex’pression Center for New Media d/b/a Ex’pression College for Digital Arts (“Ex’pression”);
3 and

4 **WHEREAS** Plaintiff filed this action alleging that Ex’pression violated federal and state
5 law; and

6 **WHEREAS** Ex’pression contends that Plaintiff is contractually obligated to submit his
7 claims to binding arbitration under the Federal Arbitration Act; and

8 **WHEREAS** Plaintiff contends that Plaintiff’s claims are not subject to binding arbitration
9 under the Federal Arbitration Act; and

10 **WHEREAS** the Court has set an Initial Case Management Conference in this action for
11 August 18, 2008; and

12 **WHEREAS** Plaintiff and Ex’pression (collectively “Parties”) agree that it would be
13 premature and inefficient to address the subjects required for a Joint Initial Case Management
14 Statement in light of their dispute regarding arbitration; and

15 **WHEREAS** the Parties, having met and conferred, wish to preserve judicial economy and
16 avoid the expenditure of potentially unnecessary time, effort and expense pending judicial
17 resolution of whether Plaintiff’s claims are subject to arbitration.

18 **THEREFORE** the Parties agree and stipulate as follows:

19 1. This action shall be stayed until such time as the Court enters an order granting or
20 denying Ex’pression’s Motion to Compel Arbitration.

21 2. The Parties agree to the following briefing schedule with respect to Ex’pression’s
22 Motion to Compel Arbitration:

23 a. July 22, 2008 – Ex’pression’s Opening Brief Due.
24 b. August 18, 2008 -- Plaintiff’s Opposition Brief Due.
25 c. August 25, 2008 -- Ex’pression’s Reply Brief Due.
26 d. Sepetmber 8, 2008 -- Hearing on Ex’pression’s Motion to Compel
27 Arbitration.

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3. The Parties agree to the following deadlines in connection with this case:

a. Ex'pression shall have until thirty (30) days after entry of the Court's order denying the Motion to Compel Arbitration to respond to Plaintiff's complaint. The Parties acknowledge this deadline becomes moot if the Court grants the Motion to Compel Arbitration.

b. The Parties shall serve their Rule 26 Initial Disclosures thirty (30) days after entry of the Court's order denying the Motion to Compel Arbitration. The Parties acknowledge this deadline becomes moot if the Court grants the Motion to Compel Arbitration.

c. The Initial Case Management Conference, currently scheduled for August 18, 2008, should be rescheduled until thirty (30) days after entry of the Court's order denying the Motion to Compel Arbitration. The Parties acknowledge this deadline becomes moot if the Court grants the Motion to Compel Arbitration.

4. This stipulation shall not operate to waive, estop, bar, impair or in any way affect either Parties' appellate rights, if any, in connection with Ex'pression's Motion to Compel Arbitration or any Court order resulting therefrom, and all such appellate rights are expressly preserved.

IT IS FURTHER JOINTLY REQUESTED by the Parties that this Court enter an order consistent with this Stipulation and Joint Request pursuant to Civil Local Rule 7-12.

SO STIPULATED.

Respectfully submitted,

Dated: August 8, 2008

ROPER MAJESKI KOHN & BENTLEY

By:

Thomas H. Clarke
Attorneys for Plaintiff
Samuel DiGiacomo

1 Dated: August 7, 2008

DUANE MORRIS LLP

2 By:

3 Eric J. Sinrod
4 Michael J. Dickman
5 Attorneys for Defendant
6 Ex'pression Center For New Media

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8 Dated: _____

9 By:

The Honorable Judge Marilyn H. Patel

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco